

The Senate Judiciary Committee offered the following substitute to SB 232:

A BILL TO BE ENTITLED
AN ACT

To amend Title 51 of the Official Code of Georgia Annotated, relating to torts, so as to change provisions relating to determination of the standard of care and determination of whether that standard has been breached in deciding certain actions relating to the provision of emergency medical services by a hospital or health care provider; to define terms; to state findings; to provide for factors to be considered and practice and procedure; to provide for related matters; to provide for construction with respect to other Acts; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by adding a new Code section immediately following Code Section 51-1-29.4, to be designated Code Section 51-1-29.5 to read as follows:

"51-1-29.5.

(a) As used in this Code section, the term:

(1) 'Dedicated emergency department' means any department or facility of the hospital located on the main hospital campus that meets one of the following requirements:

(A) It is held out to the public, by name, posted signs, advertising, or other means, as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or

(B) During the calendar year immediately preceding the calendar year in which a determination under this Code section is being made, based upon a representative sample of patient visits that occurred during that calendar year, it provided at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

(2) 'Emergency medical condition' means:

1 (A) A medical condition manifesting itself by acute symptoms of sufficient severity,
2 including severe pain, such that the absence of immediate medical attention could
3 reasonably be expected to result in:

4 (i) Placing the health of the individual, or, with respect to a pregnant woman, the
5 health of the woman or her unborn child, in serious jeopardy;

6 (ii) Serious impairment to bodily functions; or

7 (iii) Serious dysfunction of any bodily organ or part; or

8 (B) With respect to a pregnant woman who is having contractions:

9 (i) That there is inadequate time to effect a safe transfer to another hospital before
10 delivery; or

11 (ii) That transfer may pose a threat to the health or safety of the woman or the unborn
12 child.

13 (3) 'Health care provider' means any person licensed under Chapter 9, 10A, 11, 11A, 26,
14 28, 30, 33, 34, 35, 39, or 44 of Title 43 who provides care or assistance to an individual
15 within the scope of such health care provider's licensure, either voluntarily or at the
16 request of a hospital, including but not limited to any health care provider who is 'on call'
17 to a hospital.

18 (4) 'Hospital' means a facility which has a valid permit or provisional permit issued by
19 the Department of Human Resources under Chapter 7 of Title 31 and which operates a
20 dedicated emergency department that provides care or assistance, including but not
21 limited to emergency care, to individuals seeking medical treatment. Such term shall also
22 include any employee of such hospital who provides care or assistance to such individuals
23 within the scope of his or her employment, whether or not such person is a health care
24 provider.

25 (b) The General Assembly makes the following findings: Georgia hospitals operating
26 dedicated emergency departments are required by both state and federal law to provide
27 examination and treatment to individuals who come to a dedicated emergency department,
28 without regard to the financial or insurance status of such individuals. Hospitals and other
29 health care providers have complied with these laws to their financial detriment and under
30 the well-founded apprehension of increased liability. Due in large part to fear of such
31 liability, hospitals are experiencing extreme difficulty attracting a sufficient number of
32 physicians and other health care professionals to maintain an effective team of
33 professionals, including on-call physicians, to provide needed care and assistance to
34 citizens of this state. As a result, many hospitals are being forced to close their emergency
35 departments or forgo other needed improvements in order to financially support such
36 emergency services and their attendant liability. The shortage of these emergency providers
37 poses a serious threat to the health, welfare, and safety of the citizens of Georgia.

1 Nevertheless, it is also recognized that patients who have been injured by negligence must
2 be afforded appropriate access to legal remedies for their injuries. The General Assembly
3 therefore concludes that certain steps must be taken to preserve Georgia citizens' access
4 to emergency care on the one hand, while on the other hand providing appropriate remedies
5 for patients who are negligently injured.

6 (c) Without waiving or affecting and cumulative of any existing immunity from any
7 source, unless it is established that injuries or death were caused by willful or wanton
8 misconduct, in deciding whether a hospital or health care provider that renders care or
9 assistance in or at the request of a hospital or a health care provider to an individual who
10 comes to a dedicated emergency department or other facility provided by a health care
11 provider for treatment of an emergency medical condition, whether such care or assistance
12 is rendered gratuitously or for a fee, shall be held liable for damages to or for the benefit
13 of any claimant arising out of any act or omission in rendering such care or assistance, the
14 finder of fact must determine whether the hospital or health care provider met the
15 applicable standard of care for treatment of such patients or conditions or both in an
16 emergency department setting under similar conditions and like surrounding circumstances.
17 In making such a determination, a jury shall be charged with the duty to consider all
18 relevant circumstances that the hospital or health care provider faced when treating the
19 patient or condition or both, including, but not limited to:

20 (1) Whether the person providing care did or did not have the patient's medical history
21 or was able or unable to obtain a full medical history, including the knowledge of
22 preexisting medical conditions, allergies, and medications;

23 (2) The presence or lack of a preexisting physician-patient relationship or health care
24 provider-patient relationship;

25 (3) The circumstances constituting the emergency; and

26 (4) The circumstances surrounding the delivery of the emergency medical care.

27 (d) Notwithstanding any other law to the contrary, a cause of action alleging a breach of
28 the applicable standard of care by a hospital or health care provider in the care and
29 treatment of an emergency medical condition must be proven by clear and convincing
30 evidence."

31 **SECTION 2.**

32 It is the intention of the General Assembly that this Act control over any conflicting
33 provisions of any other Act enacted at the 2005 session of the General Assembly. It is
34 specifically the intention of the General Assembly that the provisions of this Act control over
35 any conflicting provisions of SB 3 from the 2005 session of the General Assembly and that
36 new Code Section 51-1-29.5 be as provided in this Act rather than as provided in SB 3.

SECTION 3.

(a) This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

(b) Code Section 51-1-29.5, as enacted by this Act, shall apply only with respect to causes of action arising on or after the effective date of this Act, and any prior causes of action shall continue to be governed by prior law.

SECTION 4.

All laws and parts of laws in conflict with this Act are repealed.